

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Ronald Jay Baer
SSN XXX-XX-6910
Carol Jean Baer
Carol J. Kiffe
SSN XXX-XX-1589

CASE NO. 04-33716 GFK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. ABN AMRO Mortgage Group, Inc. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 25, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 14, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on June 24, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$180,000.00, as evidenced by that certain Promissory Note dated December 17, 2001, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated December 17, 2001, executed by Ronald J. Baer and Carol J. Baer, husband and wife, recorded on January 28, 2002, as Document No. 535753, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Scott County, Minnesota and is legally described as follows to-wit:

Lot 3, Block 3, Pheasant Run 5th Addition. Scott County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of October 7, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of August, 2004 through October, 2004, inclusive, in the amount of \$1,694.97 each; accruing late charges of \$140.00 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$215,000.000 subject to Secured

Creditor's mortgage in excess of \$199,032.94.

The property is also subject to a lien in favor of Scott County Property Tax Department in excess of \$1,300.00.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor to establish that this property is necessary to an effective reorganization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 7th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

LOAN NO. 618777191

NOTE

DECEMBER 17, 2001
[Date]PRIOR LAKE
[City]MN
[State]2326 MATHIAS ROAD
SHAKOPEE, MN 55379
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 180,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is VOYAGEUR FINANCIAL, INC., DBA MINNESOTA GUARANTY MORTGAGE CORPORATION. I will make

all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.625 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on FEBRUARY 1, 2002. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JANUARY 1, 2032, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
14093 COMMERCE AVENUE N.E., PRIOR LAKE, MN 55372

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,400.03.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

EXHIBIT

A

MULTISTATE FIXED RATE NOTE - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT FORM 3200 1/01

FNMA3200 (10/00)

Page 1 of 3

Initial

JJB

Initial

Registration tax of \$ 414.00 paid
 Treasurer's Receipt No. 155106
 Conservation Fee Paid

Joanna Cheyka County Auditor

Doc. No. A 535753

OFFICE OF THE COUNTY RECORDER
 SCOTT COUNTY, MINNESOTA

Certified Filed and/or Recorded on

01-28-2002 at 10:00 Receipt: 155107

Pat Boeckman, County Recorder 01
 by mm, Deputy Fee: \$20.00

LOAN NO.: 818777191

(Space Above This Line For Recording Date)

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated
 together with all Riders to this document.

DECEMBER 17, 2001

(B) "Borrower" is

RONALD J. BAER AND CAROL J. BAER, HUSBAND AND WIFE

77-6366797
 UNIVERSAL TITLE
 METRO PRODUCTION
 7777 WASHINGTON AVE
 EDINA, MN 55439

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is VOYAGEUR FINANCIAL, INC.
 DBA MINNESOTA GUARANTY MORTGAGE CORPORATION

Lender is a CORPORATION

organized and existing under the laws of

THE STATE OF MINNESOTA

Lender's address is 14093 COMMERCE AVENUE N.E.

PRIOR LAKE, MN 55372

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated

DECEMBER 17, 2001

The Note states that Borrower owes Lender

ONE HUNDRED EIGHTY THOUSAND AND 00/100

Dollars (U.S. \$ 180,000.00) plus interest. Borrower has promised to pay this debt in regular
 Periodic Payments and to pay the debt in full not later than

JANUARY 1, 2032

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the
 Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due
 under the Note, and all sums due under this Security Instrument, plus interest.

EXHIBIT B

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider
☐ Balloon Rider
☐ Biweekly Payment Rider
☐ Other(s) [specify]

☐ Condominium Rider
☐ Planned Unit Development Rider
☐ V.A. Rider

☐ Second Home Rider
☐ 1-4 Family Rider

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the

COUNTY
(Type of Recording Jurisdiction)

of

SCOTT
(Name of Recording Jurisdiction)

LOT 3, BLOCK 3, PHEASANT RUN 5TH ADDITION, SCOTT COUNTY, MINNESOTA

27-310-026-0

which currently has the address of

2326 MATHIAS ROAD

(Street)

SHAKOPEE
(City)

, Minnesota

55379
(Zip Code)

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:


 RONALD J. BAER (Seal)
 -Borrower


 CAROL J. BAER (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower


[Space Below This Line For Acknowledgment]

STATE OF MINNESOTA,

County ss:

On this 17th day of December, 20 01, before me appeared
 RONALD J. BAER AND CAROL J. BAER, HUSBAND AND WIFE

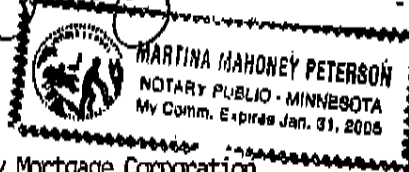
to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that ~~he/she~~ they executed the same as ~~his/her~~ their free act and deed.


 - Notary Public

My Commission expires: 1-31-05

This instrument was prepared by:

Voyageur Financial, Inc., DBA Minnesota Guaranty Mortgage Corporation
 14093 Commerce Avenue N.E.
 Prior Lake, MN 55372



Tax statement sent to:

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Ronald Jay Baer
SSN XXX-XX-6910
Carol Jean Baer
Carol J. Kiffe
SSN XXX-XX-1589

CASE NO. 04-33716 GFK

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of October 7, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of August, 2004 through October, 2004, in the amount of \$1,694.97 each; accruing late charges of \$140.00 and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy. S.D.N.Y., 1986).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$215,000.000 subject to Secured Creditor's mortgage in excess of \$199,032.94.

The property is also subject to a lien in favor of Scott County Property Tax Department in excess of \$1,300.00.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor to establish that this property is necessary to an effective reorganization.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 7th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE**CASE NO. 03-36462 DDO**

Ronald J. Baer
SSN XXX-XX-6910
Carol J. Baer
Carol J. Kiffe
SSN XXX-XX-1589

**AFFIDAVIT OF
REBECCA GREEN**

Debtor.

Rebecca Green, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of ABN AMRO Mortgage Group, Inc.

2. ABN AMRO Mortgage Group, Inc., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated December 17, 2001, executed by Ronald J. Baer and Carol J. Baer, husband and wife, recorded January 28, 2002, as Document No. 535753. The property is located in Scott County, Minnesota and is legally described as follows, to-wit:

Lot 3, Block 3, Pheasant Run 5th Addition, Scott County, Minnesota.

3. That she has reviewed the account records relating to the Baer's mortgage loan, account no. 0618777191.

4. That as of February 25, 2004, the following amounts were owing on this account:

| | |
|------------------------------------|--------------|
| Unpaid Principal: | \$178,204.71 |
| Interest through February 25, 2004 | 12,633.00 |
| Attorney's Fees: | 700.00 |
| Late Charges: | 140.00 |
| Other Fees: | 20.00 |
| Property Inspections: | 30.00 |

TOTAL: \$191,727.71

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of January, 2004 through February, 2004 in the amount of \$1,672.30 each.

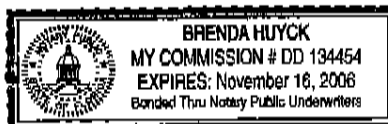
6. This affidavit is given in support of the motion of ABN AMRO Mortgage Group, Inc. for relief from the automatic stay

ABN AMRO MORTGAGE GROUP, INC.

By Rebecca Green
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 3 day of March, 2004.

Brenda Huyck
Notary Public
9733_1



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Ronald Jay Baer
SSN XXX-XX-6910
Carol Jean Baer
Carol J. Kiffe
SSN XXX-XX-1589

CASE NO. 04-33716 GFK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on October 7, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Rebecca Green, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Ronald J. Baer
Carol J. Baer
2326 Mathias Road
Shakopee, MN 55379

Jasmine Z. Keller
12 South 6th St Ste 310
Minneapolis, MN 55402

G. Martin Johnson
G. Martin Johnson, LTD
3800 W Old Shakopee Road
Bloomington, MN 55431

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Scott County Property Tax Department
200 4th Ave West
Shakopee, MN 55379

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 7th day of October, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Ronald Jay Baer
SSN XXX-XX-6910
Carol Jean Baer
Carol J. Kiffe
SSN XXX-XX-1589

CASE NO. 04-33716 GFK

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of ABN AMRO Mortgage Group, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 25, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated December 17, 2001, executed by Ronald J. Baer and Carol J. Baer, husband and wife, recorded on January 28, 2002, as Document No. 535753 covering real estate located in Scott County, Minnesota, legally described as follows, to-wit:

Lot 3, Block 3, Pheasant Run 5th Addition. Scott County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court